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SENATE

REPORT
102-87

# NUCLEAR WASTE POLICY AMENDMENTS ACT OF 1991

JUNE 20 (legislative day, JUNE 11), 1991.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

## REPORT

together with

## ADDITIONAL VIEWS

[To accompany S. 1138]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1138) to amend the Nuclear Waste Policy Act of 1982 to direct the Secretary of Energy to carry out site characterization activities at the Yucca Mountain site in Nevada, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

On page 3, lines 14 and 15, strike "a provision of" and insert "any decision made, or action taken, under" and on lines 16 and 17, strike "the date of the enactment of the Nuclear Waste Policy Amendments Act of 1991." and insert "the first such decision or action under this subsection.".

### PURPOSE OF THE MEASURE

The purpose of the bill is to amend the Nuclear Waste Policy Act of 1982, as amended in 1987 (NWPA) to direct the Secretary of Energy to carry out site characterization activities at the Yucca Mountain site in Nevada, to require that the substantive and procedural requirements of all Federal statutes applicable to site characterization be administered by Federal agencies, to waive any State or local requirements for additional permits or authorizations



S313-10

during site characterization, and to repeal the restrictions under existing law on the timing for site selection, construction, and operation of a monitored retrievable storage facility.

## Summary of Major Provisions

S. 1138 amends the NWPA as it relates to site characterization of the Yucca Mountain site in Nevada and to site selection, construction, and operation of a monitored retrievable storage (MRS) facility.

The bill directs the Secretary of Energy to carry out site characterization activities at the Yucca Mountain site in Nevada. The Secretary has this authority under existing law, and it is simply restated in the amended section 113(a) of the NWPA.

S. 1138 sets forth a process to ensure compliance with the substantive and procedural requirements of relevant Federal statutes during site characterization.

Under the process laid out in S. 1138, administration of the substantive and procedural requirements of any Federal statute relevant to site characterization activities would be carried out by the Federal agency administering the statute rather than by the State, regardless of whether the authority has been delegated to the State or has been superseded by a comparable State law. This would affect administration of the requirements of four of the Federal environmental statutes—the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act—where authority is now delegated to the State by the Environmental Protection Agency. S. 1138 would require EPA to establish a process for issuing the necessary permits or other authorizations required by these statutes.

Under the process laid out in S. 1138, administration of requirements for permits or authorizations mandated by other Federal statutes—such as the Endangered Species Act—would be carried out by the relevant Federal agency. This would not change the existing process or requirements under such statutes.

S. 1138 would explicitly waive any requirements under State, local, or tribal law for additional permits or authorizations for purposes of site characterization. This would affect requirements for a water appropriation permit, a water pollution control permit, and a sanitary sewage disposal permit, all of which are required under Nevada statute. S. 1138 requires the Secretary to consider the views of the State on the substantive requirements of these laws.

S. 1138 would repeal the restrictions and limitations in existing law on the timing of site selection, construction, and operation of an MRS facility. The Secretary has authority under the NWPA to conduct a site selection process for an MRS facility and to construct and operate an MRS if a suitable site is found. However, the Secretary is constrained on the timing for site selection, construction, and operation of an MRS because its schedule is "linked" to the repository. S. 1138 would repeal those schedule linkages.

## Background and Need

### BACKGROUND AND STATUS OF THE NUCLEAR WASTE PROGRAM

The NWPA established a national policy and program for transportation, storage, and disposal of nuclear waste and laid out a detailed plan for disposal of spent nuclear fuel and high-level radioactive waste in a geologic repository and for interim storage of spent nuclear fuel in an aboveground monitored retrievable storage (MRS) facility. Under the NWPA, the Federal Government is responsible for the storage and disposal of spent nuclear fuel and high-level waste and a schedule is set forth for the siting, construction, and operation of an MRS and a repository. The costs of the nuclear waste program are paid from the Nuclear Waste Fund, which is composed of payments made by the generators of spent fuel and high-level waste. In return for these payments, the Secretary is required under the NWPA to begin accepting spent fuel and high-level waste for storage and disposal not later than January 31, 1998.

In 1987, Congress adopted amendments to the NWPA that redirected the Department of Energy's nuclear waste program in a number of significant ways. The 1987 amendments designated site characterization of a single repository site at Yucca Mountain, Nevada, eliminated further site characterization of sites in Washington and Texas, eliminated the second repository program, and authorized an MRS facility. The amendments also established the Nuclear Waste Technical Review Board and the Office of the Nuclear Waste Negotiator.

The 1987 amendments changed significantly the focus of the Federal nuclear waste program. The 1982 Act had set up an extensive repository site selection process, involving potential sites in 23 States. Under the 1982 Act, the Secretary of Energy initially selected nine sites in six States as potential sites for the first repository and identified sites in 17 States as potential sites for a second repository. The nine sites initially selected as potential sites for the first repository were located in Nevada, Washington, Texas, Utah, Mississippi, and Louisiana. The sites initially identified as potential sites for a second repository were located in Maine, New Hampshire, Virginia, North Carolina, Georgia, Minnesota, Wisconsin, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, South Carolina, and Michigan. Under the process laid out in the 1982 Act, each of these sites was subjected to initial screening, prior to the selection of candidate sites for site characterization. At the time of the 1987 amendments, the Department was scheduled to begin extensive site characterization at candidate sites for the first repository in Nevada, Washington, and Texas and was scheduled to continue site screening activities at potential sites in seven eastern and midwestern States (Maine, New Hampshire, Virginia, North Carolina, Georgia, Minnesota, and Wisconsin).

In the 1987 amendments, Congress decided to streamline the process and focus on site characterization and testing of a single repository site. The rationale behind the decision to select a single site for characterization was several-fold. By 1987, it had become

clear that site characterization at each of three candidate sites would be significantly more expensive than originally envisioned at the time of passage of the 1982 Act. In 1982, site characterization was estimated to cost between $40 million and $60 million per site. By 1987, however, as plans for site characterization had become more extensive and detailed, it became evident that the estimated cost would be close to $2 billion per site. In addition to providing significant cost savings, selection of a single site for characterization also made it possible for the technical expertise and resources of the Department and its contractors to be concentrated on one site. Finally, it was evident by 1987 that projections of the volume of spent fuel requiring disposal through the year 2025 were significantly less than originally envisioned at the time of the 1982 Act, making it less certain when a second geologic repository would be required. In short, the idea behind the 1987 amendments was to conduct testing and site characterization of a single location—moving on to other sites only if that first site proved to be technically unsuitable. The site at Yucca Mountain was designated by the 1987 amendments as the first site for characterization.

In the 1987 amendments, Congress also authorized the Secretary to select sites for an MRS facility and to construct and operate an MRS. However, the amendments included a number of limitations and restrictions on the Secretary's ability to exercise that authority. Prior to the 1987 amendments, the Department had submitted to Congress a proposal to construct and operate an MRS facility in Oak Ridge, Tennessee. That proposal was rejected in the 1987 amendments, and Congress placed restrictions on the schedule for site selection, construction, and operation of an MRS. The restrictions on the MRS schedule were included in the 1987 amendments to address concerns that building an MRS would reduce the pressure to build a repository.

Following passage of the 1987 amendments, the Department reorganized its nuclear waste program to focus on a detailed site characterization and testing program at the Yucca Mountain site in Nevada for a period of up to 10 years. In light of the restrictions placed on site selection and construction of an MRS facility, the Department chose to defer any site-specific activities related to MRS and to place the primary focus of the program on the repository.

The site characterization program for Yucca Mountain is expected to include surface investigations and at-depth testing in an exploratory shaft facility. This phase of the program will not involve the use of any nuclear waste or spent fuel, but rather will test and evaluate the geology and rock characteristics of Yucca Mountain.

The goal of the extensive site characterization program is to gather data to assess the suitability of the site for a repository and to support, if appropriate, a license application to the Nuclear Regulatory Commission for construction of a repository at the site. Only after an extensive testing program will the Department, the NRC, and the scientific community be able to determine whether or not the Yucca Mountain site is suitable. There is general agreement in the scientific community that detailed testing must be conducted on the Yucca Mountain site, both through aboveground surface-based testing and at-depth testing in an underground facility,

before there will be sufficient scientific data to either provide or disprove the suitability of the site for a repository.

The Department has testified to Congress that it has prioritized its plans for scientific work at Yucca Mountain in order to determine as early as possible if the site would be qualified or disqualified. The Department has also stated that it has completed all of the requisite quality assurance audits and conducted a comprehensive review of the readiness to initiate site characterization at Yucca Mountain. The Department has testified that it is ready to start site characterization activities as soon as it obtains access to the site.

It is important to emphasize that the purpose of site characterization is to test and evaluate the geology and rock characteristics of Yucca Mountain. During site characterization, the Department will gather data and information to analyze whether the geology at Yucca Mountain is suitable for a repository. During this phase, there will not be any experimentation or testing that will require the use of radioactive waste. There will be no risk from radiation during site characterization. The purpose of site characterization is simply to study the site.

The environmental permits that are required for site characterization are those required to allow surface disturbance—such as that caused by the digging of trenches and boreholes—and those required to use water—such as that required to control dust or to build a concrete pad. The surface disturbance and water usage required for site characterization would be no greater than—and, in fact, may be significantly less than—that required for any typical mining operation. There would be little or no significant effect on the environment from site characterization at Yucca Mountain.

## IMPASSE AT YUCCA MOUNTAIN

The Department has been ready to begin new site characterization work at Yucca Mountain since the beginning of 1991. To date, however, the Department has been unable to initiate new work because it lacks the necessary permits required under State law.

The Department has estimated that a minimum of 18 permits or authorizations will be required during the course of site characterization. Under existing law, 11 of those permits would be administered by the State of Nevada. The requirement for 8 of the 11 permits stems from Federal statutory authority that has been delegated to the State under the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act. The requirement for the remaining 3 of the 11 permits stems from authority under Nevada statute, where there is no comparable Federal statute. The remaining 7 permits or authorizations needed for site characterization are required under Federal statute with no regulatory role for the State.

It is important to point out, however, that the Department is subject to these requirements for State permits pursuant to the statutory authority of the Federal environmental laws, and pursuant to State law where the State has determined these laws apply to Yucca Mountain, but not pursuant to any inherent authority

that the State of Nevada may have over Federal activities at the Yucca Mountain site.

The Yucca Mountain site is located entirely on Federal land, and, as such, is subject solely to Congress' control and disposition under the Property Clause (article IV, section 3, clause 2) of the United States Constitution. Yucca Mountain is located at the southwestern end of the Nevada Test Site, on three portions of land under the control of the Department of Energy, the Air Force, and the Bureau of Land Management (BLM). The eastern portion of Yucca Mountain is on the Nevada Test Site, the northwestern portion of Yucca Mountain is on land controlled by the Air Force, and the southwestern portion of Yucca Mountain is on land controlled by BLM.

When Nevada was admitted to the Union in 1864, Congress reserved all rights to the Federal lands within the State. Under the Nevada Statehood Act, Nevada was granted statehood on the condition that the people of Nevada "agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States." This same declaration is set forth in the Nevada Constitution.

It is also important to point out that prior to March 1987, it was not anticipated that the Department would need to obtain permits from the State of Nevada for site characterization at Yucca Mountain. Prior to that time, it was anticipated that site characterization activities at Yucca Mountain would be covered by the Department's permits for surface disturbance and water usage at the Nevada Test Site. In March 1987, however, the State of Nevada notified the Department that new permits would be required for site characterization.

The Department has encountered great difficulty in obtaining the first three permits required for site characterization. The requirement for two of these permits—an air quality permit and an underground injection control permit—stems from Federal statutory authority that has been delegated to the State under the Clean Air Act and the Safe Drinking Water Act, respectively. The requirement for the third of these permits—a water appropriation permit—stems from authority under the Nevada Revised Statutes. Applications for two of these permits were submitted to the State of Nevada in 1988; an application for the third permit was submitted in 1989. Little or no action was taken on these permit applications in 1988 and 1989, however; and the State of Nevada returned each of the permit applications on December 26, 1989, stating that the applications were "moot".

Until very recently, the State of Nevada has refused to act on these permit applications based upon its view that the site should be technically disqualified and that the Department lacks authority to conduct site characterization in view of the State's opposition.

The Department's authority to conduct site characterization activities at Yucca Mountain was upheld, however, by the United States Court of Appeals for the Ninth Circuit in September 1990 in *Nevada* v. *Watkins*, 914 F.2d 1545 (9th Cir. 1990). The United States Supreme Court denied the State of Nevada's petition for writ of

certiorari on March 4, 1991. On May 13, 1991, in a related case in United States District Court in Nevada, Judge Howard McKibben ordered the State of Nevada to act on two of the pending permit applications by July 17, 1991 and to submit a progress report to the court on the third pending permit application no later than July 17, 1991.

The State of Nevada is now under court order to process the first three permits required for site characterization at Yucca Mountain. However, there is no guarantee that site characterization will be allowed to move forward without imposition of additional procedural delays by the State of Nevada. Furthermore, it is likely that application for additional permits required for site characterization will not be processed on a reasonable time schedule without further litigation. As noted above, at least 15 additional permits will be required during the course of site characterization, many of which will require action by the State not only when they are initially issued but also as they are amended or renewed. The Department's attorneys have estimated that as long as 8 years could be spent in litigation to obtain all of the necessary permits for the testing program. The State has made its intentions quite clear. State officials have repeatedly stated publicly that they will continue to use all lawful means to "frustrate the Federal program." On March 21, 1991, in testimony before the Committee on Energy and Natural Resources, Nevada Governor Bob Miller reiterated this position, saying that the State would use the "legal process to try and thwart" the Federal program.

Following the Committee's action on S. 1138 on June 12, 1991, the State of Nevada issued the first of the required permits—the air quality permit—to the Department for purposes of site characterization of Yucca Mountain. Two days later, on June 14, 1991, the State notified the Department of its intent to issue the second of the required permits—the underground injection permit—and scheduled a public hearing on this permit application for July 16, 1991.

Issuance of these two permits will be a significant step forward in the Department's effort to initiate new site characterization work at Yucca Mountain. It is not clear, however, when—or if—the State of Nevada will complete action on the third pending permit application for a water appropriation permit. Furthermore, it may be necessary for the Department to obtain the water appropriation permit before it will be able to comply with the conditions included in the air quality permit. The air quality permit includes restrictions for the control of fugitive dust at Yucca Mountain and states explicitly that water or chemicals must be used to keep the dust controlled at the site 24 hours per day, 365 days per year. According to Department officials, this means that water will be required for most, if not all, site characterization activities planned for Yucca Mountain. Chemicals may be used to control the fugitive dust from only some of the minor activities planned for Yucca Mountain.

Even under the most optimal circumstances, a water appropriation permit is not likely to be issued before October 1991. The State of Nevada has scheduled public hearings on the water appropriations permit application beginning on September 23, 1991. There

will continue to be significant opportunities to delay the issuance of this permit, however. At a June 13, 1991 pre-hearing conference on the water appropriation permit application, Nevada Deputy Attorney General Harry Swainston indicated that the State would require a substantial amount of time to prepare for public hearings on the waste permit application and requested a delay of 6 months.

### NEED FOR LEGISLATION TO CONDUCT SITE CHARACTERIZATION AT YUCCA MOUNTAIN

It is evident that there will be unending opportunities to frustrate and delay indefinitely the site characterization program at Yucca Mountain in the absence of action by the Congress as proposed by this legislation. The State of Nevada has stated that it will comply with the orders issued by the court. At the same time, however, the State has made it clear that it will continue to use all lawful means to frustrate the process and prevent the site characterization of Yucca Mountain.

Four years ago, the Congress amended the NWPA and directed the Department to conduct site characterization and testing at Yucca Mountain. Four years later, the Department has yet to even begin the site characterization program at Yucca Mountain. It has taken 3 years simply to get the State of Nevada to act on the first permit application. It has taken over a year of litigation to bring about action on the first permit application. As many as 18 permits may be required during the course of the 10-year site characterization program at Yucca Mountain. The prospect of continued delay—and unending litigation—for each of the remaining permits is simply unacceptable.

This legislation represents a workable solution to an important national problem that must be faced up to by the Administration and the Congress. This legislation is identical to the nuclear waste provisions of the Administration's national energy strategy submitted to Congress in February 1991. It has the support of the Department of Energy and the Environmental Protection Agency. The Nuclear Regulatory Commission has no official position on the legislation but has testified to the Committee on Energy and Natural Resources that the Department must conduct testing onsite at Yucca Mountain in order to assess the site's suitability. In short, this legislation is essential if the Federal Government is serious about solving the problem of nuclear waste in this country.

If the Federal Government is serious about the commitment made in the NWPA to safe and permanent disposal of nuclear waste, then Congress must face up to its responsibility and take decisive action on this legislation. Failure to act on this legislation will mean that spent nuclear fuel and high-level waste will continue to accumulate where it is generated for the foreseeable future—onsite at 113 operating reactors at 74 sites in 33 States around the country. Furthermore, failure to act on this legislation will mean that ultimately Congress will have no choice but to reopen the NWPA to initiate a search for other potentially acceptable sites for a geologic repository. If the current program is shut down by the opposition of the State of Nevada and the failure of the Congress to

take decisive action, in all likelihood, it will be many years before a new program is developed.

The Committee believes that enactment of this legislation is essential to ensure that site characterization at Yucca Mountain moves forward on a reasonable time schedule and to ensure that the goal of safe and permanent disposal of nuclear waste will ultimately be achieved. The Committee has explored possible alternatives to legislation, including whether some agreement could be worked out between the Federal Government and the State of Nevada that would allow the testing program at Yucca Mountain to go forward. The Committee has also explored whether there is ample authority under existing law to allow site characterization to proceed absent intervening action by Congress. The Committee has concluded, however, albeit reluctantly, that new legislation is necessary if site characterization is to be carried out in a timely fashion.

### INADEQUACY OF EXISTING AUTHORITY

There is existing authority under the environmental laws for a Presidential exemption for Federal agencies from State requirements under certain circumstances. In addition, there is existing authority under the environmental laws for the Environmental Protection Agency to witdraw authority delegated to the States under certain circumstances. It is the Committee's judgment, however, that these provisions do not offer a viable solution to the impasse at Yucca Mountain for a number of reasons.

Each of the four major environmental laws that are relevant to site characterization at Yucca Mountain—the Clean Act Act, the Clean Water Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act (RCRA)—contain provisions that would allow a Presidential exemption for Federal agencies from State requirements. In three of these statutes—Clean Air, Clean Water, and RCRA—the President may grant an exemption to Federal agencies "if he determines it to be in the paramount interest of the United States to do so." Under each of these statutes, such an exemption could be for a period no longer than 1 year. Additional exemptions could be granted for periods not to exceed 1 year if the President made a new determination under the statute. Under the Safe Drinking Water Act, the Administrator of EPA is given the authority to waive compliance upon the request of the Secretary of Defense and upon a determination by the President that such a waiver "is necessary in the interest of national security." No time limit is given for a Presidential waiver under the Safe Drinking Water Act.

Clearly, the President could make a determination that site characterization of Yucca Mountain is "in the paramount interest of the United States" and exempt site characterization from the Federal requirements of the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act. In the case of the Safe Drinking Water Act, it is questionable whether the President could—or would—make a determination that site characterization of Yucca Mountain is "necessary in the interest of national security."

In the Committee's view, however, use of the Presidential exemption authority under these statutes is neither adequate nor desirable for purposes of site characterization at Yucca Mountain. The Presidential exemption authority has only been used in limited circumstances in the past, where the exemption was necessary for a very short period of time. In this case, an exeption would be necessary for a period of up to 10 years to cover the entire site characterization program at Yucca Mountain. As such, it would require an annual determination by the President that such an exemption is necessary. Furthermore, the Presidential exemption authority could only be used to exempt the Department from State or local requirements that it is subject to pursuant to the Federal environmental statutes. This authority could not be used to exempt the Department from State requirements that stem from Nevada statutes where there is no comparable Federal statute. Hence, use of this authority would not ease the impasse at Yucca Mountain with respect to any such requirements.

More importantly, in the Committee's view, use of the Presidential exemption authority would provide a lesser degree of protection to the environment than would be provided by the legislative provisions of S. 1138. Under the provisions of S. 1138, the EPA would be required to establish a process for issuing the necessary permits or other authorizations required by the Federal statutes. Under this scheme, the EPA would also have the responsibility for enforcing compliance with these statutes.

Three of the four environmental statutes also contain provisions whereby the Administrator of EPA can withdraw the authority delegated to a State under certain circumstances. Each of the environmental statutes vary slightly in how this authority would work. In general, however, the Administrator has the authority under these statutes to disapprove a State program under certain circumstances, such as if the State has failed to submit a satisfactory plan, if a State is not acting in compliance with any requirements or regulations, or if a State has set standards or regulations that are inconsistent with Federal standards or other State programs. Under these statutes, the Administrator could then withdraw the State's authority—if the State failed to modify its program, after being given adequate notice of the deficiency—and the Administrator would then be required to prescribe a Federal program for implementing the requirements of the statute. Under the Clean Air Act, the Administrator does not have explicit authority to withdraw a State's authority; he does, however, have authority to enforce or implement a Federal program if a State fails to fulfill its responsibility.

Again, it is possible that the Administrator could use authority under at least three of the four Federal environmental statutes to withdraw the authority delegated to the State of Nevada under these statutes. Under the Clean Air Act, it appears that the Administrator would have the authority to implement a Federal program, even though he would not have explicit authority to withdraw the State authority. Use of these authorities, however, would require the Administrator to withdraw all of Nevada's authority to issue permits under these Federal statutes. The Administration would not have the authority under these statutes to withdraw the

State's authority simply for purposes of permits related to site characterization at Yucca Mountain.

As with the Presidential exemption authority discussed previously, in the Committee's view, use of the Administrator's authority to withdraw Nevada's authority under these Federal statutes is neither adequate nor desirable for purposes of site characterization at Yucca Mountain. Similarly, use of this authority would provide a lesser degree of protection to the environment than would be provided by the legislative provisions of S. 1138.

PRECEDENTS

Withdrawal of a State's permitting authority under Federal statute and a limited waiver of State and local laws or regulations such as proposed by S. 1138 is not without precedent. In a number of previous instances, Congress has determined that the national interest dictates taking such action. In the TransAlaska Pipeline Authorization Act, Congress directed the Secretary of Interior and other appropriate Federal officers "to issue and take all necessary action to administer and enforce rights-of-way, permits, leases, and other authorizations that are necessary for or related to the construction, operation, and maintenance" of the pipeline system and authorized such Federal officers to "waive any procedural requirements of law or regulation that they deem desirable to waive" to accomplish the purposes of that Act (43 U.S.C. 1652 (b) and (c)). Similarly, Congress included provisions in Title V of the Public Utility Regulatory Policies Act of 1978 (43 U.S.C. 2008) and in the Alaska Natural Gas Transportation Act (15 U.S.C. 719(g)) that recognized the potential need to waive provisions of law or regulation in order to facilitate completion of a project in the national interest.

In the same vein, as noted previously, it is quite clear that Congress has reserved for itself the power to determine what laws and regulations will apply to Federal activities on Federal land. Unquestionably, S. 1138 would take away from the State of Nevada its existing authority under Federal statute to require permits or authorizations for site characterization activities at Yucca Mountain. S. 1138 would also take away from the State of Nevada any authority derived from State law to require permits or authorizations where the State has determined these laws apply to Yucca Mountain. However, as noted previously, it is completely within the power of Congress to make the ultimate determination of what laws or regulations will apply to Federal activities on Federal land.

NEED FOR LEGISLATION WITH RESPECT TO THE MRS

The restrictions placed on the schedule for site selection, construction, and operation of an MRS in the 1987 amendments severely limit the usefulness of an MRS as an interim storage facility. Because of these restrictions, the Department could not begin construction of an MRS until the Nuclear Regulatory Commission has issued a construction authorization for a repository. Hence, an MRS would be in operation only about 3 years ahead of the schedule for opening of a repository. Under this scenario, an MRS would be of limited value as an interim storage facility.

The Committee believes, however, that there is significant value to having an MRS available not only as an interim storage facility prior to opening of a repository but also as a packaging and handling facility during the period of operation of a repository. The NWPA established a January 31, 1998 date by which the Department is obligated to accept spent fuel from utilities. The Committee believes that it is important that every effort be made to enable the Department to meet that obligation. By removing the schedule restrictions on the MRS, the Department believes it would be able to develop an MRS facility that could be ready to open by 1998.

The 1987 amendments established an MRS Review Commission to review the advantages and disadvantages of an MRS and to make a recommendation to Congress on whether an MRS should be included in the waste management system. The MRS Commission concluded that there were substantial benefits to be gained from an MRS in the nuclear waste system but also concluded that this value was significantly diminished by the schedule restrictions. The MRS Commission report recommended that Congress authorize the building of two smaller interim storage facilities but did not make a judgment on the need for an MRS as originally conceived by the NWPA.

The Committee continues to believe than an MRS facility is an important part of the overall waste management system and that its value could be significantly enhanced by removal of the schedule restrictions. In the Committee's view, an MRS facility would not only allow the waste management system to operate better but also allow the system to operate sooner.

It is important to point out that S. 1138 would only repeal the schedule restrictions for the MRS. S. 1138 would not repeal the limitations on the size of an MRS facility or the volume of spent fuel that would be allowed to be stored at an MRS at any one time. In the Committee's view, these remaining limitations on the operation of an MRS facility provide adequate assurance that the pressure to build a repository would not be lessened by the building of an MRS.

## Legislative History

S. 1138 was introduced on May 22, 1991, by Senators Johnston and Wallop, and was referred to the Committee on Energy and Natural Resources.

S. 1138 is identical to provisions of the Administration's National Energy Strategy legislation, contained in Subtitle B of Title V of S. 570, which was introduced by Senators Johnston and Wallop (by request) on March 6, 1991.

The full Committee held a hearing on Subtitle B of Title V of S. 570 on May 13, 1991. The full Committee also held an oversight hearing on the Department of Energy's civilian nuclear waste program on March 21, 1991. Testimony was received from the Secretary of Energy, the Deputy Secretary of Energy, the Deputy Administrator of the Environmental Protection Agency, and the Governor of Nevada, as well as from representatives of the Nuclear Regulatory Commission, the Nuclear Waste Technical Review Board, the National Association of Regulatory Utility Commission-

ers, affected units of local government, and private sector witnesses.

The Committee met in open business session to consider the legislation on June 12, 1991.

## Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on June 12, 1991, by majority vote of a quorum present recommends that the Senate pass S. 1138, if amended as described herein.

The rollcall vote on reporting the measure was 14 yeas, 5 nays, as follows:

| YEAS | NAYS |
|---|---|
| Mr. Johnston | Mr. Bradley [1] |
| Mr. Ford | Mr. Wirth |
| Mr. Bingaman | Mr. Akaka |
| Mr. Conrad [1] | Mr. Wellstone [1] |
| Mr. Fowler [1] | Mr. Seymour [1] |
| Mr. Shelby | |
| Mr. Wallop | |
| Mr. Hatfield | |
| Mr. Domenici [1] | |
| Mr. Murkowski [1] | |
| Mr. Nickles | |
| Mr. Burns | |
| Mr. Craig | |
| Mr. Garn [1] | |

[1] Indicates vote by proxy.

## Committee Amendments

During consideration of S. 1138, the Committee adopted two clarifying amendments. The purpose of these amendments is to clarify when an action can be brought to contest the constitutionality of the provisions of the new section 113(a) of the NWPA. S. 1138 as introduced stated that an action to contest the constitutionality of a provision of the new section 113(a) must be brought within 60 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1991.

Under the provisions of S. 1138 as introduced, an action to contest the constitutionality would be required to be brought within 60 days of enactment of the legislation, regardless of whether any decision had been made or any action had been taken under the authority of the new section 113(a). As such, the opportunity to contest the constitutionality would have been limited.

The amendments adopted by the Committee clarify that an action to contest the constitutionality of any decision made, or action taken, under the provisions of the new section 113(a) must be brought within 60 days of the first decision made or action taken under the new section 113(a). The amendments adopted by the Committee make the language consistent with the language in section 119 of the NWPA with respect to a challenge to the constitutionality of other provisions of the Act.

The Committee intends that the phrase "any decision made, or action taken, under this subsection" include a decision by any Federal agency to grant any permit or other authorization for purposes of site characterization or an action by the Department to initiate new site characterization activities at Yucca Mountain or to carry out activities in the absence of a permit otherwise required by Nevada statute. Hence, the "first such decision or action" is intended by the Committee to mean either a decision by another Federal agency to issue a permit or authorization to the Department for purposes of site characterization or an action taken by the Secretary to carry out activities related to site characterization in the absence of a State-required permit, whichever occurs first. Therefore, the 60-day clock for purposes of an action to contest the constitutionality of the provisions of the new 113(a) would start from the date of that first decision or action.

## Section-by-Section Analysis

Section 2 of the bill amends section 113(a) of the NWPA relating to site characterization at the Yucca Mountain site in Nevada. The new section 113(a) contains seven paragraphs as follows:

Paragraph (1) of the new section 113(a) directs the Secretary of Energy to carry out site characterization activities at the Yucca Mountain site in Nevada. The Secretary already has this authority under existing law. This paragraph is virtually identical to the language contained in section 113(a) of existing law.

Paragraph (2) of the new section 113(a) states that, for the purposes of site characterization of Yucca Mountain, administration of the substantive and procedural requirements of any Federal law, ordinance, or regulation shall be carried out by the Federal agency administering the law, ordinance, or regulation, regardless of whether its administration has been delegated, or could be delegated, to the State or superseded by a comparable State law. This would affect administration of any Federal statute where the authority is delegated to the State. In particular, this would apply to the requirements of four of the major Federal environmental statutes—the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act—where authority is now delegated to the State by the Environmental Protection Agency. S. 1138 would require EPA to establish a process for issuing the necessary permits or other authorizations required by these statutes.

Administration of requirements for permits or authorizations mandated by other Federal statutes—such as the Endangered Species Act—would be carried out by the relevant Federal agency. This would not change the existing process or requirements under such statutes.

Paragraph (3) of the new section 113(a) states that any requirement for a permit, license, right of way, certification, approval or other authorization imposed by a State, local, or tribal law, ordinance, or regulation does not apply to site characterization activities at Yucca Mountain. Under this paragraph, the Secretary is directed to carry out site characterization activities at Yucca Mountain notwithstanding a denial of, or refusal to act on, an applica-

tion for a permit, license, right of way, certification, approval, or other authorization required by a State, local, or tribal law, ordinance, or regulation.

The Department has identified three State permits that will be required for site characterization, for which the authority stems strictly from State law rather than from Federal law delegated to the State. These permits are a water appropriation permit, a water pollution control permit, and a sanitary sewage disposal permit, all of which are required under the Nevada Revised Statutes.

Paragraph (4) of the new section 113(a) directs the Secretary to consider the views of State, local, and tribal officials regarding the substantive provisions of State and local laws, ordinances, and regulations.

Paragraph (5) states that a civil action to contest the constitutionity of any decision made, or action taken, under this subsection must be brought within 60 days of the first such decision or action. This paragraph also states that a court may not enjoin site characterization activities in an action brought to contest the constitutionality of these provisions except as part of the final judgment.

As noted in the discussion of the Committee amendments, the "first such decision or action" is intended by the committee to mean either a decision by another Federal agency to issue a permit or authorization to the Department for purposes of site characterization or an action taken by the Secretary to carry out activities related to site characterization in the absence of a permit that would otherwise by required by State law, whichever occurs first. Therefore, the 60-day clock for purposes of an action to contest the constitutionality of the provisions of the new section 113(a) would start from the date of the first decision or action.

The Committee intends that there be ample opportunity to contest the constitutionality of an action taken or a decision made under the new section 113(a). The Committee believes, however, that there is ample constitutional authority for the provisions of the new section 113(a). As noted previously, Congress' power to determine what laws and regulations apply to Federal activities on Federal land is quite clear.

With respect to Congress' power to provide only 60 days to challenge the constitutionality of an agency action or decision under a statute and to prohibit a court from granting interlocutory injunctions, the Committee notes that each has been previously exercised and upheld. Similar 60-day limitations are found in the Federal Power Act (16 U.S.C. 8251(b)), the Public Utility Holding Company Act (15 U.S.C. 79x), the Energy Policy and Conservation Act (15 U.S.C. 2004(a)), the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652(d)), and the Public Utility Regulatory Policies Act of 1978 (43 U.S.C. 2011(b)). The power of Congress to limit the ability of the courts to grant injunctions has been well settled by the United States Supreme Court in two principle cases: *Lockerty* v. *Phillips* and *Yakus* v. *United States.* Similar provisions to limit the ability of courts to grant injunctions are contained in both the Trans-Alaska Pipeline Authorization Act and the Public Utility Regulatory Policies Act of 1978.

Paragraph (6) states that paragraphs (2), (3), (4), and (5) apply only to site characterization activities at Yucca Mountain conduct-

ed or begun before the Secretary submits to the Nuclear Regulatory Commission (NRC) an application for a construction authorization for a repository.

Paragraph (7) states that the provisions of paragraphs (2), (3), (4), and (5) relating to site characterization at Yucca Mountain shall not be regarded as a precedent or requirement for similar provisions to be contained in any proposed negotiated agreement developed by the Nuclear Waste Negotiator under title IV of the NWPA. Title IV of the NWPA established the Office of the Nuclear Waste Negotiator. It is the responsibility of the Negotiator to attempt to negotiate an agreement with a State or Indian tribe specifying the terms and conditions under which such State or tribe would agree to host a repository or MRS. The purpose of paragraph (7) is to make clear that the provisions of paragraphs (2), (3), (4), and (5) apply only to site characterization at Yucca Mountain and are not intended to apply to any other proposed site for an MRS or repository.

Section 3 of the bill repeals section 145(b) and section 148(d) (1) and (2) of the NWPA. Section 145(b) and Section 148(d) (1) and (2) contain restrictions and limitations on the timing for site selection, construction, and operation of a monitored retrievable storage (MRS) facility.

The Secretary has authority under the NWPA to conduct a site selection process for an MRS facility and to construct and operate an MRS facility if a suitable site is found. The Secretary is constrained, however, on the timing for site selection, construction, and operation of an MRS because its schedule is "linked" to the repository. These so-called linkages are contained in section 145(b) and section 148(d) (1) and (2).

Section 145(b) states that the Secretary may not select a site for an MRS until the Secretary has successfully completed repository site characterization and has recommended to the President a site for development as a repository. Under existing law, the Secretary is authorized to conduct preliminary site screening for an MRS and to gather data sufficient to support a license application to the NRS. Section 145(b) prevents the Secretary from making the final selection of a site for an MRS, however, until the point that the Secretary recommends to the President the approval of a site for development as a repository.

Section 148(d) sets forth licensing conditions for any license issued by the NRC for an MRS facility. Two of these licensing conditions—those contained in paragraphs (1) and (2)—are restrictions on the construction and operation of an MRS. Paragraph (1) of section 148(d) states that construction of an MRS may not begin until the NRC has issued a construction authorization for a repository. Paragraph (2) of section 148(d) states that construction or operation of an MRS shall be prohibited during any period that construction of a repository is ceased or during any period that the license for a repository is revoked.

## Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, June 20, 1991.*

Hon. J. BENNETT JOHNSTON,
*Chairman, Committee on Energy and Natural Resources,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1138, the Nuclear Waste Policy Amendments Act of 1991, as amended and ordered reported by the Senate Committee on Energy and Natural Resources on June 12, 1991. Enactment of this bill could result in additional sums being appropriated from the nuclear waste fund over the 1992–1996 period, because it would allow the Department of Energy (DOE) to proceed immediately with its plans for site characterization. By permitting the program to proceed without state environmental permits, enactment of this bill would reduce delays and could reduce the total cost of the nuclear waste repository program.

Enactment of S. 1138 would not affect direct spending or receipts. Therefore pay-as-you-go procedures would not apply to this bill. We estimate that enactment of S. 1138 would not affect the budgets of state or local governments.

Purpose: S. 1138 would amend the Nuclear Waste Policy Act so that any requirement for a state or local permit, certification, or approval would not apply to site characterization activities conducted by the DOE under this act. DOE is conducting site characterization work at Yucca Mountain, Nevada, to determine if this site is suitable for a permanent nuclear waste repository. The bill would also allow DOE to proceed with site selection for a monitored retrievable storage (MRS) facility. Under current law, an MRS site cannot be selected until a site for a repository has been recommended.

Background: Nevada has refused to issue DOE the state environmental permits required to conduct certain site characterization work. Through the Justice Department, DOE is pursuing the necessary permits in court. S. 1138 would allow DOE to proceed with site characterization activities without state environmental permits. In 1991 DOE budgeted about $35 million for site characterization activities and about $9 million on MRS activities. If this bill is enacted, it is possible that the schedules and budgets for site characterization and the MRS facility could be accelerated. Whether S. 1138 would significantly increase spending on the nuclear waste program over the next five years depends on appropriations actions.

DOE estimates that about $10 million of site characterization work is dependent on state environmental permits. This permit-dependent work is, in turn, delaying other nuclear repository efforts that would cost about $230 million annually. An increase in the nuclear waste budget of this magnitude could occur without S. 1138 being enacted, if Nevada grants DOE the necessary environmental permits, or if a court orders the state to do so.

Under current law, construction of the MRS depends on finding a state willing to host the facility or meeting the requirement that the Secretary of Energy must recommend a site for development of

a repository before an MRS site can be formally selected. Thus, by decoupling the MRS site selection from the permanent repository site recommendation, S. 1138 might make it possible for MRS construction spending to occur earlier than it may under current law. DOE's most recent schedule for completion of a nuclear waste repository assumes that environmental permits are received from Nevada in 1990 and that a repository site recommendation is made to the President in 2001. This bill could permit MRS construction to begin before then. DOE's most recent plans assume that a state will volunteer to host the MRS, that construction would begin in 1996 and would be completed in 1998, and that the facility will cost about $800 million.

If you wish further details on this estimate, we will be pleased to provide them. The staff contact is Kim Cawley, who can be reached at (202) 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
*Director.*

## REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out the provisions of S. 1138.

The bill is not a regulatory measure in the sense of imposing Federally-established standards or significant economic responsibilities on private individuals or businesses. The bill amends the Nuclear Waste Policy Act of 1982 (NWPA) to direct the Secretary of Energy to carry out site characterization activities at the Yucca Mountain site in Nevada, to require the Environmental Protection Agency (EPA) to administer the requirements of any Federal environmental statute during site characterization, and to repeal the restrictions under existing law on the timing for site selection, construction, and operation of a monitored retrievable storage facility.

The Secretary executes the functions of waste disposal under the NWPA in consultation with the Nuclear Regulatory Commission (NRC), the EPA, affected States, Indian tribes, and local governments. Certain activities of the Secretary are regulated by the NRC and the EPA under existing law. This bill does not change the scope or character of this basic scheme. It would, however, provide an expanded regulatory role for EPA with respect to the administration of the requirements of any Federal environmental statute during site characterization.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1138.

## EXECUTIVE COMMUNICATIONS

The pertinent reports and communications received by the Committee from the Department of Energy, the Environmental Protection Agency, and the Nuclear Regulatory Commission setting forth

executive agency recommendation related to S. 1138 are set forth below.

**The Secretary of Energy**
Washington, DC 20585

June 11, 1991

The Honorable J. Bennett Johnston
Chairman
Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for Department of Energy comments on S. 1138, a bill to amend the Nuclear Waste Policy Act of 1982 to direct the Secretary of Energy to carry out site characterization activities at the Yucca Mountain site in Nevada, and for other purposes.

S. 1138 is identical to subtitle B, title V, of S. 570, the Administration's National Energy Strategy Act, and, therefore, the Department of Energy strongly supports this legislation and urges its enactment.

The safe and permanent disposal of the Nation's high-level radioactive wastes is one of the premier environmental concerns facing our country today. Solving this complex problem is also essential to removing one of the primary obstacles to the continuing employment of nuclear power as an important contributor to the Nation's future energy and environmental goals.

Enactment of S. 1138 is essential to enable the Department of Energy to carry out in a timely manner its statutory mandate to determine the suitability of the Yucca Mountain candidate repository site, while preserving the requirement to protect the public's health and safety and the environment.

The enactment of S. 1138 would be in accord with the President's legislative program.

I trust that these comments will be of assistance to the Committee in considering this legislation.

Sincerely,

James D. Watkins
Admiral, U.S. Navy (Retired)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
JUN 20 1991
WASHINGTON, D.C. 20510

OFFICE OF ENFORCEMENT

JUN 20 1991

Honorable J. Bennett Johnston
Chairman
Committee on Energy & Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In response to your request, we have reviewed S.1138, the Nuclear Waste Policy Amendments Act of 1991. This bill is identical to Sections 511 and 512 of S.570, the National Energy Strategy Act of 1991.

In previous testimony before the Committee on Energy and Natural Resources, EPA has endorsed Section 511 of S.570 as an appropriate measure to facilitate DOE's site characterization work at Yucca Mountain, Nevada. EPA supports enactment of S.1138 for the same reasons.

Sincerely,

Christian R. Holmes
Deputy Assistant Administrator
for Federal Facilities

Printed on Recycled Paper

PREPARED TESTIMONY

SUBMITTED BY

UNITED STATES NUCLEAR REGULATORY COMMISSION

TO

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

CONCERNING

CIVILIAN RADIOACTIVE WASTE MANAGEMENT PROGRAM

PRESENTED BY

ROBERT M. BERNERO

RECTOR, OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS

SUBMITTED: MARCH 21, 1991

Good morning Mr. Chairman, I am Robert M. Bernero, Director of the U. S. Nuclear Regulatory Commission's (NRC's) Office of Nuclear Material Safety and Safeguards. I would like to thank you for the opportunity to present the NRC's views on the technical and regulatory issues of importance to a potential geologic repository at the Yucca Mountain site.

In December 1988, the U. S. Department of Energy (DOE) issued the Yucca Mountain Site Characterization Plan (SCP), in preparation for site characterization at the Yucca Mountain site. By the end of July 1989, the NRC staff completed its review of the SCP on schedule and concluded that the plan was usable, but raised two objections to DOE starting work on the site and provided a number of major comments. The two objections, regarding DOE's quality assurance (QA) program and the Exploratory Shaft Facility (ESF), both stood as obstacles to starting site characterization work. The two objections were (1) a qualified QA program was not in place for site characterization activities and (2) DOE had not demonstrated the adequacy of the design control process under which the ESF was prepared nor the adequacy of the design itself.

The DOE acknowledged the objections and continued to work toward resolution of the QA objection. Regarding the ESF, further questions were raised by the Nuclear Waste Technical Review Board (NWTRB), and DOE undertook a major study to reevaluate the ESF design. Once the QA objection was acceptably resolved, DOE site characterization might have begun by performing some surface-based testing. However, the State of Nevada opposes site characterization and has effectively blocked site work.

In this phase of preapplication review and site characterization, DOE has the responsibility to address and resolve objections before proceeding with its work. Because our objections are obstacles to DOE starting site characterization work, we have been giving particular attention to reviewing DOE's progress toward resolving them and will recognize, as warranted, the resolution of the objections.

Regarding our objection on QA, DOE has been making considerable progress toward resolution. To date, there has been partial closure on several of the particulars involved in the QA objection. For example, we have been conducting reviews of the detailed QA programs for DOE and its contractors. This review is divided into an evaluation of the QA program plans, which provide a description of the program, and an evaluation of effectiveness in program implementation. To conduct its evaluation of effectiveness, the NRC staff observes the DOE audits and surveillances conducted at all major organizations participating in the site characterization program. The NRC staff has concurred with DOE's findings that two DOE contractor programs are acceptable for new site characterization activities, four DOE contractor programs are acceptable for new site characterization activities with some exceptions, and the DOE Headquarters and DOE Yucca Mountain Site Characterization Office programs are acceptable to begin limited new site characterization activities in Midway Valley.

We have also reviewed two of DOE's study plans which are the detailed technical plans necessary for DOE to begin the early site characterization activities in Midway Valley. Based on our review, we have no technical objection to DOE

initiating these studies as planned. Therefore, both our technical and QA reviews have resulted in no objection to DOE initiating the early site characterization studies in Midway Valley.

With respect to the ESF objection, DOE is conducting a study of alternatives to the ESF design in the SCP and is scheduled to select a new design later this year. We met with DOE in January 1991, to discuss a number of specific concerns related to our objection. The meeting enabled us to gain a better understanding of what DOE was doing in this area, especially with regard to the identification and incorporation of regulatory requirements. Based on interactions with DOE, it appears that DOE is adequately considering the NRC staff concerns in its alternatives study. However, before NRC can draw a final conclusion, it will have to review DOE's formal submittals on the objection. We expect to review the DOE results promptly and to recognize resolution of our objections if warranted.

In addition to DOE's response to the two NRC staff objections, DOE also responded in December 1990, to the other comments we made on DOE's SCP. We have been reviewing this response and our impression is, as we expected, that DOE's response primarily describes how DOE will address the staff's comments in its future site characterization work rather than actually resolving comments at this time.

It is our conclusion that DOE has made significant progress toward resolving our two objections. From our perspective, it appears that once DOE receives the necessary permits it can begin site characterization work in limited areas. In particular, we have no QA or technical objection to DOE starting limited site characterization work in Midway Valley. Furthermore, we consider that

moving ahead with these and eventually other site characterization studies is necessary to resolve the technical questions about the acceptability of the Yucca Mountain site.

This concludes my statement. Mr. Chairman, I am prepared to answer any questions that you and the Committee may have.

## ADDITIONAL VIEWS OF MESSRS. BINGAMAN, SHELBY, WALLOP, DOMENICI, AND CRAIG.

During the hearings on this bill, the Committee heard testimony regarding the benefits available to the State of Nevada. The 1987 amendments to the Nuclear Waste Policy Act provide for a benefits agreement and specific payments to the State during site characterization as well as during development and operation of a repository. The State has thus far not availed itself of the opportunity to negotiate a benefits package. We are concerned that the benefits issue may be part of the State's rationale in obstructing the site characterization.

We support the concept of a negotiated agreement between the State and the Administration that would take into consideration the concerns of the State and provide for appropriate payments in light of those concerns. In addition to the specific benefits package provided in the 1987 Amendments, the State could pursue an agreement with the Nuclear Waste Negotiator or other appropriate Administration officials for submission to the Congress which would more specifically address the State's concerns.

We encourage State and local officials as well as other affected parties in Nevada, to come forward with their proposals and consider negotiating a benefits package for submission to the Congress for inclusion in this legislation.

JEFF BINGAMAN.
RICHARD C. SHELBY.
MALCOLM WALLOP.
PETE V. DOMENICI.
LARRY E. CRAIG.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by the bill, S. 1138, as reported (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law to which no change is proposed is shown in roman):

## THE NUCLEAR WASTE POLICY ACT OF 1982

AN ACT TO PROVIDE FOR THE DEVELOPMENT OF REPOSITORIES FOR THE DISPOSAL OF AN ACT To provide for the development of repositories for the disposal of high level radioactive waste and spent nuclear fuel, to establish a program of research, development, and demonstration regarding the disposal of high-level radioactive waste and spent nuclear fuel, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Nuclear Waste Policy Act of 1982".

* * * * * * *

### SITE CHARACTERIZATION

SEC. 113. [(a) IN GENERAL.—The Secretary shall carry out, in accordance with the provisions of this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) and section 112(b)(2) and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in such comments or in the environmental assessment submitted under subsection (b)(1).]

*(a) IN GENERAL.—(1) The Secretary shall carry out, in accordance with this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) of this section and section 112(b)(2) of this Act and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in those comments or in the environmental assessment submitted under subsection (b)(1) of this section.*

*(2) Notwithstanding any other law, for the purpose of site characterization activities, a Federal agency administering a law, ordinance, or regulation that imposes a requirement for a permit, li-*

*cense, right of way, certification, approval, or other authorization, shall administer the application of that law, ordinance, or regulation to site characterization activities conducted by the Secretary under this Act without regard to whether its administration has been, or could be, delegated to a State or superseded by a comparable State law.*

*(3)(A) A requirement for a permit, license, right of way, certification, approval, or other authorization imposed by a State, local, or tribal law, ordinance, or regulation does not apply to site characterization activities under this Act.*

*(B) The Secretary shall carry out site characterization activities under this Act notwithstanding a denial of, or refusal to act on, an application for a permit, license, right of way, certification, approval, or other authorization required by a State, local, or tribal law, ordinance, or regulation.*

*(4) Notwithstanding paragraph (3), in carrying out site characterization activities under this Act, the Secretary shall consider the views of State, local, and tribal officials regarding the substantive provisions of State and local laws, ordinances, and regulations.*

*(5) An action to contest the constitutionality of any decision made, or action taken, under this subsection must be brought within 60 days of the first such decision or action under this section. A court may not enjoin site characterization activities carried out by the Secretary under this Act in an action brought to contest the constitutionality of a provision of this subsection except as part of a final judgment.*

*(6) Paragraphs (2), (3), (4), and (5) of this subsection apply only to site characterization activities conducted or begun before the Secretary submits to the Commission under section 114(b) of this Act (42 U.S.C. 10134(b)) an application for a construction authorization for a repository.*

*(7) The exclusion or inclusion of any provisions contained in paragraphs (2), (3), (4), or (5) of this subsection in a negotiated proposed agreement developed under title IV of this Act shall not affect any determinations regarding either the reasonableness or appropriateness of such an agreement.*

* * * * * * *

SITE SELECTION

SEC. 145. (a) IN GENERAL.—The Secretary may select the site evaluated under section 144 that the Secretary determines on the basis of available information to be the most suitable for a monitored retrievable storage facility that is an integal part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act.

[(b) LIMITATION.—The Secretary may not select a site under subsection (a) until the Secretary recommends to the President the approval of a site for development as a repository under section 114(a).]

* * * * * * *

CONSTRUCTION AUTHORIZATION

SEC. 148.

* * * * * * *

(d) LICENSING CONDITIONS.—Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that—

[(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under section 115(d);

[(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;]

(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this Act first accepts spent nuclear fuel or solidified high-level radioactive waste; and

(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

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